

Exhibit E



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February 12, 2024

Daniel G. Bird
Eric J. Maier
Sven E. Henningson
Tiberius T. Davis
Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.
1615 M Street NW
Suite 400
Washington, DC 20036

Re: *In re Google Digital Advertising Antitrust Litigation*,
No. 121-md-03010 (PKC)

Dear Daniel, Eric, Trip, and Tiberius:

I am writing to follow-up on our February 9, 2024 meet-and-confer to memorialize our discussion regarding Google's January 27, 2023 Requests for Production (the "Requests"), Google's January 27, 2023 Interrogatories (the "Interrogatories"), and the three existing volumes of Daily Mail's Privilege Log (the "Log"), as well as our understanding of next steps.

On our February 9 call, we again expressed our desire to reach agreement as quickly as possible on all remaining issues. Though reserving Google's rights as to all proposals and positions in our prior correspondence, we offered several compromise proposals that we hope will swiftly bring our negotiations to a close. Please let us know Daily Mail's positions on the remaining issues outlined herein as soon as possible, and in all events no later than February 20, 2024. As we indicated, we would be happy to meet-and-confer about the remaining open items in the meantime.

Search Terms

On our call, we explained that, subject to Daily Mail's willingness to compromise on other issues, we are willing to agree to the search term proposal outlined in Appendix B of Daily Mail's January 30, 2024 letter with the correction of the two syntactical errors identified in red below. For convenience, a full, final search term proposal is included herein as **Appendix A**.¹

¹ As explained, Google reserves all rights as to all previously proposed search terms, as well as the right to request additional terms based on further discovery.

February 12, 2024

Page 2

Corrected Terms
(develop* OR launch* OR licens* OR feature* OR pricing OR interopera* OR SWOT OR (strength* w/2 weakness*)) w/10 ("Ad Tech" OR "ad server" OR "ad exchange" OR Meta OR Twitter OR LinkedIn OR Amazon) w/10 compet*
((report OR data OR analytics OR metrics) w/10 ("display advertising")) AND (Google OR "Ad Tech" OR provider)

Relevant Time Period

As explained, we maintain that it is reasonable and appropriate for Daily Mail to run specific terms over broader time periods in light of Daily Mail's allegations. Nonetheless, in an effort to reach agreement, we explained that we would be willing to narrow our request that Daily Mail run searches of electronically stored information over the specific broader timeframes for seven terms identified in **Appendix B**. Please confirm that Daily Mail will do so.

Custodians

While we appreciate Daily Mail's willingness to add Noah Szubski and Carly Steven as custodians, we maintain that Google's remaining proposed custodians are likely to have non-duplicative relevant information and that searching their files is proportionate to the needs of the case. Nonetheless, we explained that we would be willing to withdraw our request as to the majority of our additional proposed custodians (reserving all rights to request that they be added based on forthcoming discovery) if Daily Mail agrees to add the following three individuals: Paul Zwillenberg, Martin Clarke, and Lord Rothermere/Jonathan Harmsworth.

While we have repeatedly explained the relevance of these three individuals in prior conversations and correspondence, we reiterate that they are of particular importance to test Daily Mail's general allegation that it was Google's alleged monopolistic conduct—as opposed to, for example, other factors such as Daily Mail's corporate management and business strategies—that caused the alleged damages of which Daily Mail complains. See, e.g., Daily Mail Amended Complaint ("Compl.") ¶¶ 5-6. These three individuals are those that are most likely to have information relevant to this assertion, among other things.

For each of these custodians, Daily Mail's concern that they have responsibilities beyond advertising technology is obviated by the targeted search terms reflected in Appendix A and the fact that, even if captured by search terms, documents irrelevant to this litigation need not be produced. Moreover, all produced documents will have the benefit of the protections in the Court's Confidentiality Order. See ECF 297. In addition, the fact that these three individuals appear on some of the documents of existing custodians in Daily Mail's productions does not exclude the possibility that they have relevant, non-duplicative documents.

- For **Lord Rothermere/Jonathan Harmsworth**, the fact that his email address does not appear in Google's own production does not mean that he does not have relevant documents. Indeed, while Lord Rothermere may not have been communicating with Google directly, as we have indicated, Daily Mail's existing productions show that he directed communications with Google and directed others at Daily Mail to execute his vision for the Daily Mail-Google partnership on advertising technology.

February 12, 2024

Page 3

- For **Paul Zwillenberg**, Daily Mail points out that his documents from his time at Boston Consulting Group (“BCG”) would not be included in a custodial collection from his time at Daily Mail. Google does not seek from Daily Mail documents from Mr. Zwillenberg’s time at BCG; rather, Mr. Zwillenberg’s position at BCG and involvement with Daily Mail as an external consultant on digital advertising underscore that he was hired for his expertise in the industry and is likely to have relevant information once he brought that expertise to bear at Daily Mail.
- For **Martin Clarke**, though Daily Mail represents that his “primary responsibilities concerned editorial decision-making,” popular news coverage of his role at Daily Mail suggests that those editorial decisions were in pursuit of a broader strategy of getting clicks and advertisers on Daily Mail’s properties to increase Daily Mail’s revenue.² Daily Mail also does not respond to Google’s points that we understand Mr. Clarke to have been heavily involved in discussions on GAM contracts and to have overseen digital advertising revenue surpass print advertising revenue at Daily Mail in 2018.

Please confirm that you will search the files of each of the above custodians.

Timing of Substantial Completion of Document Productions

You previously agreed that Daily Mail would substantially complete by mid-March 2024 its production of go-get documents as well as custodial documents of the 11 then-agreed upon custodians. Please confirm whether Daily Mail will substantially complete its productions as to the additional currently agreed-upon custodians (Noah Szubski and Carly Steven) on this same schedule.

Go-Get Documents

Given Daily Mail’s representation in its December 6, 2023 letter that it was “searching centrally located files for documents responsive to Google’s requests, including” Request Nos. 1-34, 36, 43, 47-59, 61, 65-70, and 72-73, we were surprised by Daily Mail’s January 30, 2024 correspondence stating that Daily Mail maintains its objection to Request No. 73. We expect that Daily Mail is in fact searching centrally located files and producing go-get documents relevant to each of the remaining identified Requests. If that is not the case, please let us know immediately.

With respect to Request No. 73, we explained that Daily Mail’s document retention policies are relevant to, among other issues, the completeness of Daily Mail’s productions. See, e.g., *Conservation Law Found., Inc. v. Shell Oil Co.*, 2023 WL 5434760, at *19 (D. Conn. Aug. 22, 2023) (explaining that document retention policies are relevant because they can “inform what documents [parties] can be expected to have during the period at issue” (internal

² See, e.g., Clive Irving, *Nightmare Week for London’s Last Press Lord: Name-Shamed by Meghan Markle and His Digital Genius Quits*, The Daily Beast, Dec. 5, 2021, <https://www.thedailybeast.com/nightmare-week-for-londons-last-press-lord-name-shamed-by-meghan-markle-and-his-digital-genius-quits> (“At MailOnline, Clarke grasped the significance of this as a path to making the business profitable. Of course, this meant abandoning the idea that the worth of a story lay in its news value. Sometimes, a dozen different versions of the same story (or ad) were posted to see which combination of words, headline and pictures drew the most clicks and, therefore, captured an audience in line with what advertisers wanted.”).

February 12, 2024

Page 4

quotations and citation omitted)). Please confirm Daily Mail will produce go-get documents relevant to Request No. 73 before the agreed-upon mid-March substantial completion deadline.

Privilege Log

As discussed, there are still a few discrete outstanding issues with various volumes of Daily Mail's Log. Please produce supplemental volumes of the Log addressing the following:

- In the Supplement to Volume 2 of the Log, the entries in the following rows describe the withheld document as an “email string” but do not include an Email Author, Email Recipients, or the associated email addresses: 95, 96, 102, 103, 109, 110.
- In Volume 3 of the Log, the entries in the following rows describe the withheld document as an “email string” but do not include an Email Author, Email Recipients, or the associated email addresses: 98, 99, 100, 101, 103, 104, 105, 106.

Interrogatories

Although we are still reviewing Daily Mail's First Supplemental Rule 26(a)(1) Initial Disclosures and Third Set of Supplemental Responses and Objections to Defendants' First Set of Interrogatories (both dated January 31, 2024), we discussed the following preliminary issues on our call:

- **Interrogatory No. 7:** In e-mail correspondence dated August 10, 2023, Daily Mail agreed to “supplementation beyond the identification of documents pursuant to Rule 33(d).” Nonetheless, your Third Set of Supplemental Responses solely identifies documents under Rule 33(d). Please provide the agreed-upon narrative response to this Interrogatory.
- **Interrogatory No. 16:** Daily Mail's response to this Interrogatory was first identified as deficient in August 2023, and we later clarified that Google would be amenable to supplementation pursuant to Rule 33(d) or by narrative. See Nov. 10, 2023 C. Boisvert Letter to D. Bird at 4. You agreed to supplement this Interrogatory in your December 6, 2023 letter and elsewhere, but you did not supplement this Interrogatory in your Third Set of Supplemental Responses. Please do so.
- **Interrogatory No. 22:** Daily Mail's response to this Interrogatory was first identified as deficient in August 2023, and you reiterated your willingness to supplement it in your December 6, 2023 letter. Your Third Set of Supplemental Responses purport to supplement this Interrogatory with references to documents under Rule 33(d), but in doing so, you have identified only a single document. As discussed, we expect that Daily Mail will further supplement this Interrogatory (and, indeed, all Rule 33(d) Interrogatories) promptly after it produces additional relevant documents.
- **Interrogatory No. 2:** Daily Mail supplemented its response to this Interrogatory pursuant to Rule 33(d) by identifying over 6,000 documents, over half of which are automated reports reflecting weekly (or sometimes even daily) readouts of raw ad sales that in no way provide a meaningful means of calculating total ad revenue responsive to this Interrogatory. It would be incredibly burdensome for Google to review this unorganized data to determine if Daily Mail's response is satisfactory. Please confirm that Daily Mail does not have another means of responding to this Interrogatory that would not require

February 12, 2024

Page 5

review of over 6,000 documents. See, e.g., *Sadofsky v. Fiesta Prods., LLC*, 252 F.R.D. 143, 148 (E.D.N.Y. Aug. 6, 2008) (“A responding party creates an unequal burden for the receiving party when it has the answer to an interrogatory in the form of a compilation but responds to the interrogatory by producing and identifying business records, such that the receiving party must then compile the records to obtain the answer to the interrogatory.”). If Daily Mail “will be able to extract the information from the documents more quickly than [Google], and with substantially less burden,” then Daily Mail is required to do so by providing, for example, a data dictionary, summary, or other means of digesting this data (if applicable, in the format outlined in the “Data Productions” section below). *Nonferrous BM Corp. v. Daniel Caron Ltd.*, 1996 WL 208182, at *1 (S.D.N.Y. Apr. 26, 1996).

Finally, when Daily Mail provides a list of Bates numbers in the future (either as part of a Rule 33(d) response or otherwise), we would greatly appreciate that list being provided in an Excel/.csv file rather than (or in addition to) a Word document or PDF. Please confirm that Daily Mail will provide such Excel/.csv files going forward.

Data Productions

As discussed, we are continuing our evaluation of Daily Mail’s data productions. In order to facilitate our ability to confirm that Daily Mail’s data productions are substantially complete, please provide a data dictionary, data schema, or other explanatory memo that defines each field and/or describes what information is contained in each field in the data file for your existing data productions, including but not limited to:

- i. Field type (e.g., string, integer, boolean, float, etc.).
- ii. For any fields that have coded categories or values, please provide a mapping table or otherwise indicate what each code indicates. For example, if a field [environment_type] has values “DW” or “MA”, please provide information showing that “DW” = Desktop Web, “MA” = Mobile App, etc.
- iii. For any boolean fields, please indicate the meaning of TRUE and FALSE (or 1 and 0).
- iv. For any geography fields, please indicate whether the geography indicates the location of the end user, the publisher, the advertiser, etc.
- v. For any fields containing information on revenues, costs, fees, prices, etc., please indicate what currency the values are in.

Finally, for any future productions, we would appreciate it if Daily Mail would specify whether a given production contains data and provide the Bates ranges for the relevant files. This will help us more swiftly confirm that data fulfilling Daily Mail’s discovery obligations has been produced.

* * * * *

We look forward to receiving Daily Mail’s responses to the issues above—including whether Daily Mail’s understanding of the issues discussed is different than outlined above—as soon as possible. We request that Daily Mail in all events reply no later than February 20, 2024.

February 12, 2024

Page 6

We are of course available to schedule another call in the interim if that would be helpful, as we remain eager to bring these negotiations to a close.

Yours,

/s/ Caroline Boisvert

February 12, 2024

Page 7

Appendix A**Agreed Upon Search Terms**

No.	Term
1	("business plan" OR strateg* OR forecast* OR roadmap OR "financial statement" OR (allocat* w/3 inventory)) w/10 ("Ad tech" OR "Display Advertising" OR DoubleClick OR "Double Click" OR "Double-Click" OR DFP OR "Ad Manager" OR GAM OR "Ad Exchange" OR AdX OR "Ad X" OR "Ad Server" OR "Demand Side Platform" OR "Demand-Side Platform" OR DSP OR "Header Bidding" OR HB)
2	((cost w/2 benefit) OR CBA OR analys* OR switch* OR RFP OR contract) w/10 (pric* OR quality OR feature* OR effective*) w/10 ("Ad tech" OR "Display Advertising" OR DoubleClick OR "Double Click" OR "Double-Click" OR DFP OR "Ad Manager" OR GAM OR "Ad Exchange" OR AdX OR "Ad X" OR "Google Ads" OR "Ad Server" OR "Demand Side Platform" OR "Demand-Side Platform" OR DSP OR "Supply Side Platform" OR "Supply-Side Platform" OR SSP OR "Header Bidding" OR HB)
3	("display advertising") w/10 (factor OR cost OR effective* OR yield) w/10 (format OR channel)
4	(analysis OR analyz*) w/10 ("direct transaction" OR "indirect transaction") AND ("Ad Exchange" OR "Ad Network" OR "Publisher-Automated Transaction")
5	("Accelerated Mobile Pages" OR AMP OR (mobile w/2 (format OR design))) w/10 (comply OR compliance OR conversion* OR profit* OR latency OR spam OR malware OR "header bidding" OR HB)
6	(content w/10 (relationship OR relat! OR cause OR drive)) AND ("advertising revenue" OR (fees w/3 "ad tech") OR (fees w/3 Google))
7	"Private Marketplace"
8	Direct w/10 Transaction
9	Programmatic w/10 Transaction
10	Remnant
11	Direct w/10 (transaction* OR sale)
12	"Dynamic Allocat**"
13	Bernanke
14	"Dynamic Revenue Share"
15	(Line w/10 cap)
16	"auction data"
17	Poirot
19	"Project Elmo"
19	"Open Bid"
20	"Bid Data Transfer"
21	BDT
22	"Minimum Bid**"
23	("Google Display Network" OR GDN) AND (Adsense OR DFP OR DoubleClick)
24	"News Media Alliance" OR NMA

February 12, 2024

Page 8

25	(advertising w/5 revenue*) AND (Ukraine OR Covid* OR corona* OR declin* OR reduc* OR profit* OR loss*)
26	breach* w/10 privac*
27	(user w/3 privacy) AND ("display advertising")
28	(document* OR record* OR messag* OR chat* OR file*) w/5 (retain* OR retention* OR preserv* OR maintain*)
29	("display advertising" OR "print advertising") w/5 (format* OR channel* OR publish* OR "ad tech" OR "adtech" OR revenue* OR cost* OR effect* OR target* OR yield* OR desktop* OR mobile* OR "app display" OR television*) w/10 (study* OR analy* OR report* OR presentation* OR deck* OR record* OR compar*)
30	"News Carousel" w/5 (mobile* OR search* OR result* OR scroll* OR displace*)
31	(study OR analysis OR report OR presentation) w/5 ("display advertising" OR "programmatic direct" OR remnant OR backfill OR "demand driver" OR audience OR (visitor w/5 characteristic) OR readership OR "advertising consultant" OR "advertising agenc*" OR (auction w/3 (rule OR form OR mechanism)))
32	(develop* OR launch* OR licens* OR feature* OR pricing OR interopera* OR SWOT OR (strength* w/2 weakness*)) w/10 ("Ad Tech" OR "ad server" OR "ad exchange" OR Meta OR Twitter OR LinkedIn OR Amazon) w/10 compet*
33	((strateg* OR attract* OR win* OR increas* OR gain*) w/5 (advertiser* OR user* OR subscriber*)) AND (Meta OR Twitter OR LinkedIn OR Amazon)
34	(Traffic OR Impression* OR visit* OR clicks OR visib* OR algorithm*) w/5 (manipulate* OR gaming OR game OR exploit* OR control* OR steer*)
35	(study* OR studies OR "A/B test" OR "A/B tests" OR evaluat* OR "cost benefit" OR "cost-benefit" OR analy* OR report* OR deck*) w/10 ("Header Bidding" OR HB OR "client-side" OR "client side" OR "server-side" OR "server side") w/10 (integrat* OR number OR limit* OR cap* OR latency OR problem* OR privacy OR fraud* or malware* OR complaint* OR issue*)
36	"Dynamic Allocation" OR EDA OR ((Poirot OR Elmo OR Bernanke) w/10 (Google OR Project)) OR "Dynamic Revenue" OR "Viewable CPM" OR VCPM OR (Auction w/10 Redact*) OR ("Line Item" w/10 (cap* OR limitation*)) OR "Unified Pricing Rules" OR UPR OR "Open Bidding" OR "Bid Data Transfer File" OR "Minimum Bid To Win"
37	("User ID" OR "user identifier" OR "user identifiers" OR "user identification" OR "third-party cookie" OR "third-party cookies") w/10 ("Ad tech" OR "Display Advertising" OR DoubleClick OR "Double Click" OR "Double-Click" OR DFP OR "Ad Exchange" OR AdX OR "Ad X" OR "Ad Server" OR "Demand Side Platform" OR "Demand-Side Platform" OR DSP OR revenue OR monetiz* OR strateg*)
38	((report OR data OR analytics OR metrics) w/10 ("display advertising")) AND (Google OR "Ad Tech" OR provider)
39	(unified w/3 pric*) AND (Google OR GAM OR publisher* OR ad*)
40	(AdX OR "Ad X" OR "google ad exchange") w/10 ("Google Ad Connector" OR "direct tag" OR "Google publisher tag" OR "Google publisher tags") w/10 (doubleclick OR "double-click" OR "double click" OR DFP OR "Ad Manager" OR GAM)

February 12, 2024

Page 9

Appendix B

Search Terms to Run Over Broader Time Periods Than January 1, 2013 to Present

No. ³	Agreed-Upon Search Term	Time Period to Run	Relevant Allegations
29	((“display advertising” OR “print advertising”) w/5 (format* OR channel* OR publish* OR “ad tech” OR “adtech” OR revenue* OR cost* OR effect* OR target* OR yield* OR desktop* OR mobile* OR “app display” OR television*)) w/10 (study* OR analy* OR report* OR presentation* OR deck* OR record* OR compar*)	January 1, 2008–Present	Daily Mail alleges that despite the growth of online advertising, publishers like Daily Mail have not seen growing ad spending since 2008 because of Google’s alleged conduct. See, e.g., Compl. ¶¶ 5–6.
1	(“business plan” OR strateg* OR forecast* OR roadmap OR “financial statement” OR (allocat* w/3 inventory)) w/10 (“Ad tech” OR “Display Advertising” OR DoubleClick OR “Double Click” OR “Double-Click” OR DFP OR “Ad Manager” OR GAM OR “Ad Exchange” OR AdX OR “Ad X” OR “Ad Server” OR “Demand Side Platform” OR “Demand-Side Platform” OR DSP OR “Header Bidding” OR HB)	January 1, 2010–Present	Daily Mail alleges that Google began to “acquire[] . . . its ad tech dominance” “when it acquired DoubleClick in early 2008.” Compl. ¶ 37.
12	“Dynamic Allocat*”	January 1, 2010–Present	Daily Mail alleges that Google introduced Dynamic Allocation “[s]hortly after acquiring DoubleClick,” which was in 2008. Compl. ¶¶ 37, 42.
13	Bernanke	January 1, 2010–Present	Daily Mail’s January 30 letter characterizes Project Bernanke as a “secret project” that, to “Daily Mail’s knowledge [was] not active prior to 2013.” Google is entitled to test Daily Mail’s assertion.

³ The numbers referenced in this column denote the terms as they are identified in Appendix A above. With the exception of Term 37 (which Daily Mail agreed to more recently), the numbers also correspond with those used in Daily Mail’s January 30 letter.

February 12, 2024

Page 10

14	“Dynamic Revenue Share”	January 1, 2010–Present	Daily Mail’s January 30 letter states that Dynamic Revenue Share “was not a live product until January 2013, and to Daily Mail’s knowledge was not disclosed to publishers until much later.” Google is entitled to test Daily Mail’s assertion.
25	(advertising w/5 revenue*) AND (Ukraine OR Covid* OR corona* OR declin* OR reduc* OR profit* OR loss*)	January 1, 2006–Present	Daily Mail alleges that despite the growth of online advertising, publishers like Daily Mail have not seen growing ad spending since 2008 because of Google’s alleged conduct. See, e.g., Compl. ¶¶ 5-6.
37	("User ID" OR "user identifier" OR "user identifiers" OR "user identification" OR "third-party cookie" OR "third-party cookies") w/10 ("Ad tech" OR "Display Advertising" OR DoubleClick OR "DoubleClick" OR "Double-Click" OR DFP OR "Ad Exchange" OR AdX OR "Ad X" OR "Ad Server" OR "Demand Side Platform" OR "Demand-Side Platform" OR DSP OR revenue OR monetiz* OR strateg*)	January 1, 2006–Present	Daily Mail’s allegations about hashing user IDs go back to “before Google acquired DoubleClick,” Compl. ¶ 108, and Daily Mail identifies this conduct beginning in 2009, Compl. ¶ 110.